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C O N F I D E N T I A L SECTION 01 OF 02 PRAGUE 001275

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SUBJECT: CZECH CORRUPTION FIGHTER UNDER ATTACK BY JUSTICE MINISTER

Classified By: Political Officer Mark Canning for reasons 1.4(b) and (d)
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1. SUMMARY. (C) In the midst of a very public battle between Justice Minister Pavel Nemec and the Supreme State Prosecutor (Attorney General) Marie Benesova, Benesova's number two, Deputy Attorney General Jaroslav Fenyk, contacted the Embassy to air grievances and his version of events. Fenyk provided documents, many internal, that he claims show the Justice Minister has exercised a rarely used power to overturn verdicts, suspend sentences, and interfere in personnel assignments. Fenyk was not able to say specifically why Nemec has allegedly done this, though he suggested that there are several high-profile corruption cases to be prosecuted soon and that Nemec might want to remove Benesova before this happens. Nemec has prepared a short list of possible replacements. Prime Minister Jiri Paroubek, on the other hand, has said that it would be politically counterproductive to sack Benesova at this time.

2. BACKGROUND. (U) The Czech republic's highest ranking prosecutor is Marie Benesova, who has had the position since January 15, 1998. Six years is a relatively long time in the mercurial world of Czech politics. In that time the nation has had 12 Justice Ministers, though both Pavel Rychetsky and Prime Minister Vladimir Spidla served more than once in acting capacities. The current Justice Minister, Deputy Prime Minister Pavel Nemec, took up the post in August, 2004, and has been at loggerheads with Benesova the entire time. Two weeks after Nemec assumed the position, he and Benesova had a public falling out over the case of Viktor Kozeny, a Czech fugitive living in the Bahamas. When asked about the case, Benesova's office revealed that although Prague had no extradition treaty with the Bahamas, a 1925 treaty between Czechoslovakia and Britain would be honored and extradition would be requested. Justice Ministry Spokesman Peter Dimun, whom Fenyk refers to as the Deputy Justice Minister, went on the nation's most widely watched commercial channel, TV Nova, to say that Benesova's office had irresponsibly leaked the information without consulting the Justice Ministry beforehand. Dimun implied that Kozeny, now alerted to the possibility of extradition, would take steps to avoid prosecution. In defense of Benesova, Fenyk, and former Justice Minister Rychetsky both said it would have been pointless and dishonest to deny that extradition was being pursued.

NOT EXACTLY A PRINCE OF A FELLOW

3.(C) One month after the Kozeny incident, Benesova and Nemec clashed again when a member of the ruling family of Qatar, Hamid Bin Abdul Sani-al Thani, was arrested and charged with sexually abusing more than a dozen under-aged girls. In April of this year, 3 weeks before the case came to trial, Nemec, explaining that bilateral relations were being strained, ordered that the Prince be extradited to face trial in his homeland. Benesova disagreed, saying that such intervention threatened the independence of the Czech judicial system, and added that the Prince should be tried in the Czech Republic, where the crime was committed, and where the witnesses live. In May, the court convicted the prince and sentenced him to 30 months in prison, a sentence he appealed. Meanwhile, in a separate legal proceeding, after a lower court backed up Benesova and ruled Nemec had no authority to release the Prince, the Czech Supreme Court ruled in favor of Nemec. The prince was released and has since returned to Qatar. Fenyk doubts the Prince will be prosecuted at home. Nevertheless, Benesova's office will have to spend roughly half a million crowns (USD 21,000) translating all the court documents into Arabic. Fenyk added that a few days after the Supreme Court made the ruling, one of the court's vice-presidents, a Mr. Kucera, received a new car from the Ministry of Justice. Fenyk also pointed out that several of the judges on the Supreme Court had publicly stated support for Benesova's stance before issuing their ruling, leading to suspicions that someone had gotten to them and persuaded them to change their minds.

4. (C) In the aftermath of the case of the Qatari Prince, Benesova asked that a survey of similar cases in the past be conducted to find out whether a Justice Minister had ever overturned or ignored a verdict. The research was conducted by Olga Koubova, of the Ministry of Justice's International

Relations Department. She surveyed several thousand cases that predated the case of the Qatari Prince and ten that came afterward. She could not find a single case where a previous court decision had been overturned. Days after her findings were made public she received a one line dismissal notice telling her that she was being removed from office. No explanation was given. Fenyk had a copy of the dismissal notice and passed it to the Embassy.

15. (C) Fenyk also raised other cases in which he alleged that Nemec was interfering. One case involves a bankruptcy judge, Jiri Berka, who was arrested in April, 2003, in connection with the failure of Union Bank. The case has provoked considerable public speculation about the influence of high ranking officials, intelligence operatives, and allegations of murder contracts on investigative reporters. Fenyk told the Embassy that Nemec had been wiretapped speaking with suspects in the case.

16. (C) Fenyk also mentioned the case of theft at a military base in Pribram, 45 minutes south of Prague. In that case, 56 hand grenades and thousands of 7.62mm rounds were stolen. 10 suspects were convicted and sentenced to prison, though the material was never recovered. Nemec tried to have the Supreme Court release two of the ten, Tomas Dunaj-Jurco and Jaroslav Cerny. Fenyk explained that the Minister of Justice has rarely used extraordinary powers to ask that certain convicts, for example, a single mother with many children, be released from the obligation of serving a sentence. The court refused Nemec's request. According to Fenyk, the law only allows the Justice Minister to make this request once, but Nemec has repeated the request. Since Fenyk cannot imagine any legitimate reason why the two convicted of receiving stolen grenades and rounds should be freed, he can only suspect there is some illegitimate reason behind Nemec's determination to pursue their release. The Supreme Court should rule on this soon.

17. (C) Fenyk also complained that Nemec was using a number of administrative measures to harass, intimidate and discredit Benesova. These measures include a recent audit, that Fenyk boasted turned up a discrepancy of only ten dollars, making Benesova's office one of the most accountable in the country. Fenyk also said Nemec has accused nearly two dozen prosecutors, including many in Benesova's office, of unfairly prosecuting dissidents in cases before the end of communism in 1989. Fenyk himself was one of those so accused. Fenyk defended himself by saying that the only person he prosecuted was the son of a famous dissident musician. The son refused mandatory military service, a crime according to the Czech criminal code.

WHO WOULD WANT THE JOB?

18. (U) Newspaper reports say Nemec has drafted a list of five possible replacements for Benesova. Fenyk told us that he knew that at least one of the persons named had turned the job down. He said that anyone who took the position would have to fight the perception that he or she had been paid off by Nemec. In addition, Fenyk pointed out that with elections, and presumably a new Justice Minister, only nine months away, serious candidates are going to find the position unappealing. Even the Prime Minister has publicly stated that it is hard to imagine anyone replacing Benesova, whom he said he considers honest and incorruptible. But the wheels are in motion, and if she isn't removed before the election next June, she's likely to be replaced soon afterwards.

COMMENT: (C) Jimmy Carter once said that the sad duty of politics is to establish justice in a sinful world. In the Czech Republic, the sad truth is that political power can be used and is used to manipulate the justice system. Benesova may be blunt, and at times impolitic, but she is honest, even incorruptible, and in the world of Czech politics, that is saying something. She has some support among prosecutors, some judges, and one small party, the Christian Democrats. But the main parties dislike her and the Prime Minister's support for her grows weaker with each public statement. If Nemec succeeds in removing Benesova, an outcome that looks increasingly probable, it is very unlikely that her successor will be as persistent and determined to go after cases of corruption. In addition, if Benesova is removed and replaced by a political ally of the Justice Minister, many of her immediate subordinates, including those responsible for fighting serious economic crimes and who have battled against corruption alongside Benesova, say they will leave the Prosecutor's office in a show of solidarity. The Czech Republic already has a fairly abysmal record in prosecuting white collar crime and corruption. Just this week the head of the Prime Minister's office was forced to resign when a local TV station filmed him at a meeting with a Polish lobbyist allegedly discussing illegal payments. Without Benesova and her team, a bad situation could get even worse.

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